

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	No. CV-F-05-290 REC
)	
)	ORDER GRANTING PETITIONER'S
Petitioner,)	MOTION TO COMPEL PAYMENT OF
)	TRANSCRIPTS (Doc. 33)
vs.)	
)	
V. STEVEN BOOTH and LOUISE)	
Q. BOOTH,)	
)	
Respondent.)	
)	
)	

On August 22, 2005, the court heard petitioner's Motion to Compel Payment of Transcripts. No opposition was filed by respondents and respondents did not appear at oral argument.

Upon due consideration of the record and the arguments of petitioner, the court grants this motion for the reasons set forth herein.

Respondents appealed the Summons Enforcement Order to the Ninth Circuit on June 13, 2005.

Rule 10, Federal Rules of Appellate Procedure, and Rule

1 10.1, Ninth Circuit Rules, pertain to the record on appeal. Rule
2 10(a) and Rule 10-3.1(a) require that an appellant must order
3 from the reporter all portions of the transcript not already on
4 filed that the appellant believes necessary for the appeal or
5 file a certificate that no transcript will be ordered within ten
6 days after filing the notice of appeal. According to the United
7 States, respondents have not complied with these requirements.
8 On July 1, 2005, the United States designated the transcript of
9 proceedings held before Magistrate Judge Beck on May 6, 2005 as
10 necessary for the defense of the appeals pursuant to Rule 10-
11 3.1(d). Rule 10-3.1(d) provides that, within 30 days of the
12 filing of the notice of appeal, the appellant shall file a
13 transcript order in the district court, providing a copy to the
14 court reporter and the Court of Appeals and that

15 In order the transcripts, appellant shall
16 either order all portions of the transcript
17 listed by both appellant and appellee or
18 certify to the district court pursuant to
subsection (f) of this rule that the portions
listed by appellee in the response to
appellant's initial notice are unnecessary.

19 According to the United States, respondents failed to comply with
20 Rule 10-3.1(d), even after the United States served respondents
21 with a notice describing these rules and setting forth the dates
22 of compliance.

23 The United States moves the court to order respondents to
24 pay for the May 6, 2005 transcript designated by the United
25 States as necessary to defend these appeals. Rule 10-3.1(f)
26 provides in pertinent part:

1 If appellee notifies appellant that
2 additional portions of the transcript are
3 required ..., appellant shall make
4 arrangements with the court reporter to pay
for these additional portions unless
appellant certifies that they are unnecessary
to the appeal and explains why not.

5 If such a certificate is filed in the
6 district court, with copies to the court
reporter and this court, the district court
shall determine which party shall pay for
7 which portions of the transcript

8 In moving for an order that respondents pay for the May 6, 2005
9 transcript, the United States notes that respondents did not
10 comply with Rule 10-3.1(f) by filing the certification that the
11 transcript ordered by the appellee was unnecessary. As the
12 United States argues:

13 The present appeal notices were mere pretexts
14 for delay. They were a transparent attempt
to frustrate the Orders instructing the
15 respondents-appellants to appear in Judge
Beck's courtroom on June 17, 2005 and comply
16 with the IRS summonses. In that courtroom,
respondents-appellants could have asserted
17 their self-incrimination claims in response
to specific questions, and could have had
those claims tested before Judge Beck. But
18 respondents-appellants filed their appeal
notices June 13, 2005, just four days before
19 they were to appear, and on June 17 they
refused to appear, delaying their compliance
20 with the Orders. Their appeal notice on its
face belies any seriousness in the appeal,
21 for respondents-appellants, who are
individuals, there make the incredible
22 contention that this Court cannot force them
to testify 'since the respondent is an
23 artificial entity.' ... That the respondents-
appellants refuse to perfect their appeals as
24 required by FRAP 10 and 9th Cir.R. 10-3.1,
only confirms their appeals' lack of
25 seriousness. Should respondents-appellants
refuse to comply with the compulsive order
26 sought here, their cavalier behavior toward

1 the requirements for perfecting an appeal may
2 help convince the Ninth Circuit to dismiss
their appeal.

3 Because respondents have not complied with the above-quoted
4 rules and has made no showing to this court that this motion
5 should not be granted, the court rules that this motion be
6 granted.

7 ACCORDINGLY:

8 1. Petitioner's Motion to Compel Payment of Transcripts is
9 granted.

10 2. Within ten (10) court days of the filing date of this
11 Order, respondents shall order and pay for the transcript of the
12 hearing held before Magistrate Judge Beck on May 6, 2005.

13 IT IS SO ORDERED.

14 Dated: September 7, 2005
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/s/ Robert E. Coyle
UNITED STATES DISTRICT JUDGE